

ADMINISTRATIVE - INTERNAL USE ONLY

This Notice is Current Until Rescinded

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## FAIR LABOR STANDARDS AMENDMENTS OF 1974

1. On 8 April 1974 the President signed Public Law 93-259, the Fair Labor Standards Amendments of 1974. These amendments bring all Federal agencies including the CIA under the Fair Labor Standards Act of 1938, as amended. The Civil Service Commission has been given the statutory responsibility for administering the Act within most Government agencies including the CIA. This notice discusses only the overtime pay provisions of the Act.

2. The overtime pay provisions of the Fair Labor Standards Act (FLSA) apply to all employees who are not specifically designated as exempt. Types of employees to whom the Act applies include General Schedule, all Wage Board, Contract, and Nonappropriated Fund. The status of all Agency employees will be examined, and they will be formally designated as "Exempt" or "Nonexempt" and notified accordingly. Exempt employees under the Act include certain employees in executive, administrative, and professional positions and all employees serving in foreign areas. The Civil Service Commission under its administrative authority has provided guidance for determining the exempt or nonexempt status of employees. The exemption categories are as follows:

a. Executive Exemption

Within the executive category, employees are exempt as managers or supervisors. To be exempt requires a degree of responsibility which usually includes planning work, as-signing work, reviewing results, and rating employees. Within the Wage Board category, wage supervisors are exempt but Leaders are not. Nonappropriated fund employees except for supervisors are nonexempt.

b. Administrative Exemption

The administrative exemption category includes many employees in the Agency who are currently designated as professional. The work of such employees is concerned with management policies and general operational activities. Thus most intelligence and administrative employees are included within this group. Within this category the full performance level, which is below the supervisory level, is considered exempt. Employees who perform work which is trainee or developmental in nature and below the full performance level are nonexempt.

ADMINISTRATIVE - INTERNAL USE ONLY

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PERSONNEL

c. Professional Exemption

The professional exemption applies to employees whose work requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education. Included are economists, psychologists, engineers, architects, attorneys, and other categories traditionally known as professional. At the full performance level in this category employees are exempt.

3. Under the FLSA, overtime for nonexempt employees must be paid for all hours actually worked over 40 in a week which the employer "suffers or permits" to be performed. Thus, for non-exempt employees, overtime need not be "officially ordered or approved" as is presently required. The supervisor must not permit nonexempt employees to report early and perform work or voluntarily stay after hours to work without compensation. Further, compensatory time cannot be substituted for overtime payment. Nonexempt employees must be paid for overtime work.

4. The overtime rate for a nonexempt employee is not less than one and one-half times the employee's regular rate of pay which is determined by including such additional payments as night differential, Sunday premium pay, environmental differential or hazard pay, and certain post differentials (other than foreign).

5. A nonexempt employee, for overtime purposes, is entitled to the highest rate he will receive under applicable pay laws. This means that his rate must be computed both under present rules and under the FLSA with the higher amount being paid.

6. Responsibility for compliance with overtime provisions has been given to the Civil Service Commission. In conducting review for compliance, the Civil Service Commission will be responsible for post audit of overtime pay administration to determine violations and order corrective actions. The Law provides that employees may bring civil actions in Federal District Courts at any time they believe they have not been dealt with in accordance with the Act. However, the employee must first exhaust the administrative remedies available to him within the Agency.

7. The Law applies in all states and territories including Hawaii, Alaska, Puerto Rico, Guam, and the Canal Zone but it does not apply in foreign areas.

ADMINISTRATIVE - INTERNAL USE ONLY

PERSONNEL



8. The effective date of the FLSA provisions is 1 May 1974. Nonexempt employees will continue to be paid at the present rate until appropriate revisions to the payroll system have been completed. At that time, employees entitled to a larger payment under the FLSA will receive retroactive adjustments. Time and attendance reporting procedures are being revised and will be issued in the near future.

FOR THE DIRECTOR OF CENTRAL INTELLIGENCE:

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Deputy Director  
for  
Management and Services

DISTRIBUTION: ALL EMPLOYEES